Decision for dispute CAC-UDRP-106719

Case number	CAC-UDRP-106719
Time of filing	2024-07-17 11:34:34
Domain names	bourso-investissement.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOURSORAMA

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Didier Jur

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following French Registered Trademark:

BOURSO, word mark, registered February 22, 2000 under number 3009973, for goods and services in Nice Classes 9, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a financial institution doing business under the BOURSORAMA and BOURSO trademarks. Under such marks, it engages in three core businesses of online brokerage, delivery of financial information on the Internet and online banking. The Complainant asserts that it is a pioneer of online banking, with a portal at “www.boursorama.com”, and claims over six million customers.

The Complainant is the owner of French Registered Trademark Number 3009973 for the word mark BOURSO, registered on February 22, 2000.

The Complainant owns a number of domain names incorporating the BOURSORAMA and BOURSO marks, including <boursorama.com>, registered since March 1, 1998, and <bourso.com>, registered since January 11, 2000.

The disputed domain name was registered on July 16, 2024, and resolves to an inactive site. MX records are configured on the associated nameservers.

PARTIES CONTENTIONS

Complainant:

The disputed domain name is confusingly similar to the Complainant's trademark. It contains the Complainant's BOURSO trademark in its entirety followed by the generic French word "investissement" (referring to the Complainant's activities). The addition of such word is insufficient to escape a finding of confusing similarity. The suffix ".com" likewise does not change the overall impression of the designation or prevent a finding of confusing similarity.

The disputed domain name has been registered by the Respondent without rights or legitimate interests. The Respondent is not known by the disputed domain name. Previous panels have held that a respondent was not commonly known by a domain name if the WhoIs was not similar to such domain name.

The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's BOURSO trademark, or to apply for registration of the disputed domain name.

The disputed domain name resolves to an inactive page. The Respondent did not make any use of disputed domain name since its registration and has no demonstrable plan to use the disputed domain name.

The disputed domain name has been registered and is being used in bad faith. Previous cases under the Policy establish that the Complainant's BOURSO trademark is arbitrary and well-known. The addition of the term "investissement" to said trademark cannot be coincidental as it refers to the Complainant's activities.

The Complainant contends that, given the distinctiveness and reputation of the Complainant's trademarks, the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's BOURSO trademark.

The disputed domain name resolves to an inactive page. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. Previous panels under the Policy have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

MX servers are configured for the disputed domain name, which suggests that it may be used actively for e-mail use. It is inconceivable that the Respondent would be able to make any good faith use of the disputed domain name as part of an e-mail address.

Respondent:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in

bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has demonstrated that the disputed domain name contains the Complainant's BOURSO mark in its entirety, coupled with the French word "investissement", with a hyphen acting as a separator.

The coupling of such word to the Complainant's said mark does not avoid a finding of confusing similarity under the Policy. The Complainant's distinctive BOURSO trademark is recognizable in the disputed domain name and the additional term is insufficient to remove the overall impression made upon the public by the presence of such trademark (see, for example, Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Inja, Kil, WIPO Case No. D2000-1409). The hyphen in the disputed domain name, being mere punctuation, is likewise of no consequence. The generic Top-Level Domain ".com" may be disregarded in the assessment on the grounds that it is merely required for technical reasons. The Panel is satisfied that the Complainant's distinctive trademark is the dominant component of the disputed domain name notwithstanding the additional element, which in any event is a word associated with the Complainant's line of business.

The Complainant has established a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name to the Panel's satisfaction by reference to its submissions that the Respondent is not commonly known by the disputed domain name, is not affiliated with nor authorized by the Complainant in any way, has no business with the Complainant, and possesses neither license nor authorization to make any use of the Complainant's BOURSO trademark, or to apply for registration of the disputed domain name. The Panel also notes that the disputed domain name does not resolve to an active website, and that the Complainant asserts that the Respondent did not make any use of disputed domain name since its registration, nor has demonstrated any plan to use the disputed domain name.

The Respondent failed to rebut the Complainant's prima facie case in that it did not file any Response. There are no surrounding facts or circumstances tending to show that the Respondent may otherwise have rights or legitimate interests in the disputed domain name. It is therefore reasonable in the circumstances for the Panel to find that that the Respondent has no such rights or legitimate interests therein.

In the Panel's opinion, the Complainant has successfully made out a case of registration and use in bad faith in respect of the disputed domain name. The presence of the Complainant's distinctive trademark in the disputed domain name, coupled with a word associated with the Complainant's line of business, strongly suggests, in the absence of submissions and evidence to the contrary, that the Respondent had knowledge of the Complainant and its mark at the point of registration.

The disputed domain name has MX records configured on the delegated nameservers. If it were to be used by the Respondent at any point for the sending of e-mail, this would give the appearance that such communications originated genuinely from the Complainant. Any e-mail replies to said e-mails would be directed by said MX records to a mail server designated by and potentially under the control of the Respondent. This would conceivably lead to the Respondent receiving sensitive personal data from the Complainant's customers, who would be confused by the presence of the Complainant's well-known BOURSO mark in the disputed domain name into believing that they were sending such information to the Complainant. This could not be considered to be a good faith use of the disputed domain name.

There is no website at the disputed domain name. Accordingly, it is being "passively held". Such passive holding does not allow the Respondent to escape a finding of registration and use in bad faith in circumstances where, as here, the disputed domain name is confusingly similar to the Complainant's well-known mark (coupled with a word denoting the Complainant's line of business), where the Respondent has failed to submit a Response or otherwise to provide any evidence of actual or contemplated good faith use, and it is implausible that the disputed domain name could be put to any such good faith use if its website were to become active (see, on this topic, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The Respondent has failed to address any of the Complainant's contentions by way of any Response and did not advance any alternative motivation for the registration and use of the disputed domain name which might have indicated that its actions were in good faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **bourso-investissement.com**: Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2024-08-09

Publish the Decision